STATE OF MICHIGAN

COURT OF APPEALS

DELTA AIRLINES, INC.

Petitioner-Appellant,

V

CITY OF ROMULUS,

Respondent-Appellee.

UNPUBLISHED
August 2, 2002

No. 225881
Tax Tribunal
LC No. 00-263925

Before: Neff, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Petitioner Delta Airlines appeals as of right from the Tax Tribunal's order denying entry of petitioner's and respondent's stipulated consent judgment dismissing its petition for a refund of taxes. We reverse and remand for entry of the parties' stipulated consent judgment.

I. Facts and Proceedings

The underlying facts in this case are undisputed. In 1982, Delta and Wayne County entered into a 20-year lease agreement providing for Delta's use of an airplane hangar owned by Wayne County. The agreement required Delta to pay all applicable taxes during the lease period. Beginning on November 15, 1994, Delta discontinued its use of the hanger and instead, the hanger was leased to and used by Spirit Airlines. The lease to Spirit required Spirit to pay all applicable taxes during its leasehold tenure.. Despite the change in lessee, in 1995 and 1996 respondent assessed property taxes on the hangar against Delta pursuant to MCL 211.181(1).[1] Delta paid the assessed taxes on September 27, 1995, February 9, 1996, September 25, 1996, and February 11, 1997, respectively, but later realized it had discontinued its leasehold on and use of the hanger in 1994. Accordingly, Delta brought this action pursuant to MCL 211.53a, seeking a

[1] MCL 211.181(1) provides:

> Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a . . . corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or use owned the real property.

refund of the property taxes paid in 1995 and 1996.[2] The chief clerk of the Tax Tribunal notified petitioner by letter that petitioner's refund was denied because "the Michigan Tax Tribunal has determined that the Tribunal does not have jurisdiction over this matter."

In July 1999, respondent and petitioner reached agreement that petitioner had mistakenly been assessed taxes on the hanger in 1995 and 1996, and that the taxes were mistakenly paid. Petitioner and respondent memorialized this agreement in a stipulated consent judgment filed with the Tax Tribunal on July 21, 1999, which provided, in part:

> 6. For a number of years prior to December 31, 1994, Petitioner used the subject property and, based upon the fact that Petitioner is a for profit corporation that was using real property exempt from ad valorum property taxation, Petitioner was assessed taxes pursuant to MCLA 211.181.
>
> 7. As a result of the mistaken belief that Petitioner was still using the subject property on December 31, 1994 and December 31, 1995, Petitioner was assessed and paid taxes on the subject property, when, as a matter of fact, Petitioner ceased using the property in November of 1994.
>
> 8. The subject property was assessed as of the relevant tax dates as a result of a mutual mistake of fact and, therefore, the assessed, state equalized, and taxable values for 1995 and 1996 should be 0.
>
> * * *
>
> It is hereby requested that the Michigan Tax Tribunal enter a consent judgment consistent with this stipulation.

The tribunal denied the parties' stipulated consent judgment on the basis that the case had been "dismissed on February 9, 1999, [because] the Tribunal determined there was no clerical error or mutual finding of fact and, as such, lacked jurisdiction over the assessments for tax year(s) 1995 and 1996 pursuant to MCL[] 211.53a." Petitioner filed a motion for reconsideration, arguing that neither party had received an order indicating that the case had been dismissed, and that the Tribunal clerk confirmed that no such order had been issued. The rehearing motion also argued that, while the chief clerk's letter of November 19, 1998 had been treated as an order for dismissal, the chief clerk lacked authority to enter final orders.

On March 1, 2000, the tribunal acknowledged that the case had not been properly dismissed for lack of jurisdiction because the chief clerk did not have the authority to order such a dismissal. However, the tribunal denied the motion, finding that "given [p]etitioner's

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[2] On the same day, Delta also filed an action against Spirit Airlines, alleging that Spirit Airlines leased and used the hanger during the 1995 and 1996 tax years, and that it was entitled to reimbursement from Spirit for the amounts paid. The trial court granted summary disposition in favor of Delta and Spirit appealed as of right. Spirit's appeal is also decided today by this panel. *Delta Airlines, Inc. v Spirit Airlines,* unpublished opinion per curiam of the Court of Appeals, issued __/__/ 2002 (Docket No. 224410).

knowledge relative to its leasing of the property, said payments [] do not constitute a mutual mistake of fact". The tribunal further found that there had been no clerical error under MCL 211.53a, that petitioner (1) voluntarily paid the property taxes, (2) failed to bring the action "by June 30 of the tax years involved as required by MCL 205.735," and (3) had not demonstrated palpable error that misled the Tribunal in its August 5, 1999 order. As such the tribunal found it lacked "jurisdiction over the assessments at issue," and the case was dismissed.

On appeal, petitioner argues that because the taxes were paid on the basis of a mutual mistake, the tribunal erred when it dismissed the case for lack of jurisdiction, and requests "that this Court enter an Order instructing the Tribunal to accept jurisdiction in this case and enter the consent judgment to which the parties have stipulated." Respondent has not filed a brief on appeal; however, it has indicated that it "concurs in the relief sought by petitioner."

II. Standard of Review

In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive, and its decisions will not be reversed, if they are supported by competent, material, and substantial evidence on the whole record. *Michigan Bell v Treasury Dep't*, 445 Mich 470, 476; 518 NW2d 808 (1994); *Kadzban v Grandville*, 442 Mich 495, 502-503; 502 NW2d 299 (1993). *Blaser, supra.*

The parties sought to enter a stipulated consent judgment under MCL 211.53a, which provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Here the tribunal found that there was no clerical error or mutual mistake of fact to bring the parties' action under MCL 211.53a, and that the parties' had exceeded the shorter statutory time period to bring action under MCL 205.735, which applies to assessment disputes.

This is clearly not an assessment dispute—respondent agrees that petitioner did not owe any tax on the subject property. Because the parties agree that the tax was mistakenly assessed and mistakenly paid, and because there is no evidence to the contrary, the tribunal's finding that there was no mutual mistake of fact is not supported by competent, material and substantial evidence on the whole record. *Kadzban, supra*. Further, because MCL 211.53a specifically provides for reimbursement of taxes paid by mutual mistake even when not paid under protest, it was an error of law for the tribunal to rely exclusively on the common law concept that taxes "voluntarily" paid cannot be recovered. *Bateson v Detroit*, 143 Mich 582; 106 NW 1104 (1906).

Reversed.

/s/ Janet T. Neff
/s/ Kurtis T. Wilder
/s/ Jessica R. Cooper